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# THE FEDERAL REPORT

## OMB Urges Caution on Information Curbs

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The Office of Management and Budget has issued a directive to restrict the public's access to government records, but at the same time has advised agencies to use caution in applying the curbs because some federal appeals courts have ruled them invalid.

Even as the March 21 directive was issued, its interpretation of the Freedom of Information Act (FOIA) was facing challenges in Congress and in the U.S. Supreme Court.

The OMB advised the Freedom of Information offices in all executive branch agencies that, when the release of information is permitted under the FOIA, but barred under the more stringent Privacy Act, the agency should withhold the information.

The directive, signed by Christopher J. DeMuth, head of OMB's Office of Information and Regulatory Affairs, said: "In our view, the two statutes provide in straightforward and unambiguous language that agency records exempt from mandatory disclosure under the Privacy Act are . . . also exempt from mandatory disclosure under FOIA." This reversal of the position of earlier administrations is also the view taken by the Justice Department in a variety of lawsuits now under appeal.



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"What this means is that this administration is willing to ignore the advice of most of the people who have used the FOIA and studied it . . . with respect to what the legislators originally intended," said Allan Adler, an attorney with the American Civil Liberties Union.

The administration's stand on the issue has also provoked strong opposition in Congress, where Republicans and Democrats alike on the House Government Operations subcommittee on government informa-

tion, justice and agriculture have sponsored legislation instructing agencies to interpret the laws to allow the maximum disclosure of information.

Earlier this year, Rep. John N. Erlenborn (R-Ill.), who in 1974 helped draft both the Privacy Act and that year's amendments to the FOIA, said, "By passing these two acts, [we] were enhancing the rights of our citizens to know what their government was doing . . . . We certainly did not intend to give with the

one hand and take away with the other days later."

Some congressional observers expect the bill to be amended to one of the bills on the FOIA, both ad-hoc measures that would restrict the law on other points.

Last week the Supreme Court agreed to hear two cases that raise the issue, cases that have produced opposing interpretations from federal appeals courts.

The OMB directive offered a tacit acknowledgment that adverse appeals court rulings may make its new policy vulnerable to legal challenge. While telling agency officials that Privacy Act restrictions do govern requests for information under the FOIA, OMB also advised agencies not to rely solely on these exemptions when withholding information.

One key difference between the Privacy Act and the FOIA is the extent to which government officials must review records to determine what information should be released.

For instance, if an individual requests the files the government has compiled on him, the FOIA requires officials to review all pertinent documents and release everything that does not compromise national security, reveal the identities of confidential government sources, or violate a number of other specific restrictions.

By contrast, under the Privacy Act, whole groups of law enforcement and national security records are off-limits to disclosure. All a government official must do to deny any information is determine that the records being sought are in these "systems of records." No review of individual documents is required, according to a variety of sources familiar with the laws.

Federal law enforcement officials in Republican and Democratic administrations have urged passage of legislation to exempt organized crime records and other FBI documents now eligible for whole or partial release under the FOIA. The Reagan administration has also given agencies more discretion to charge higher fees for information